IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

NOEL BROWN, Plaintiff, v. S.C.I. SOMERSET, *et al.*, Defendants	: : : : :	Case No. 3:22-cv-20-SLH-KAP

Memorandum Order

Plaintiff Brown's pleading that was docketed as a motion for issuance of a subpoena, ECF no. 17, is denied.

Brown seeks records of the video surveillance of a housing unit at S.C.I. Somerset on July 5, 2022. He believes they are evidence of a "new tort" committed against him by "the defendants." As I advised Brown last month, ECF no. 14, the adequacy of his complaint has yet to be decided by the Court and, since Brown made no attempt to amend his complaint, if the Court accepts my recommendation this matter will be dismissed. No subpoena should be issued in a meritless case.

Even if the Court decides the complaint states some claim against one of the defendants, the Clerk will not be allowed to issue a subpoena to Brown so that he can obtain the records sought. Accepting a conclusory claim of a "new tort" as a basis for issuance of a subpoena encourages litigants not subject to meaningful sanctions under Fed.R.Civ.P. 45(d)(1) or Fed.R.Civ.P. 11 to waste judicial time and resources in an effort to determine whether the request has some good faith basis. This court has no general jurisdiction over torts, which are state law claims, and a subpoena seeking evidence of a "new tort" should never be issued until an explanation of the jurisdictional basis for it is given.

Closely related to that first problem, allowing *pro se* litigants who are proceeding *in forma pauperis* to obtain a subpoena as an investigatory tool without a showing of good cause presents an actual, not potential, burden on nonparties. Brown has already had at least two federal complaints dismissed for failure to state a claim, *see* Brown v. Bear-Monsanto Corp., 3:19-cv-176-KRG-KAP (W.D.Pa. October 29, 2021)(products liability action); Brown v. Wayne County Pennsylvania, 3:18-cv-155-MEM (M.D.Pa. March 15, 2021), *appeal docketed* No. 22-1506 (3d Cir.)(civil rights claims), and although the Prison Litigation Reform Act (PLRA) permits Brown three *in forma pauperis* filings, it does not fund his litigation efforts. Rule 45(d)(3) makes it the business of the judge supervising a civil matter to ensure that subpoenas do not impose an undue burden, financial or otherwise, on the recipient. An inmate's subpoena directed to the prison where he is confined seeking security camera footage presents obvious nonfinancial burdens, but even the mundane issue of cost is significant, and neither Brown's motion nor the history of

his installment payments of the filing fee under the PLRA give any hint that he is prepared to pay the reasonable costs that would be incurred in producing the records requested.

Plaintiff cannot obtain a subpoena in this matter for the evidence he seeks even if he could remedy these defects, because the evidence is not related to this matter. Any claim based on an alleged "new tort" would have to be brought in a new complaint. The PLRA amended the Civil Rights of Institutionalized Persons Act (CRIPA) at 42 U.S.C.§ 1997e(a) to state:

> No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility **until** such administrative remedies as are available are exhausted. (my emphasis).

A pending prison conditions complaint (in this case, an inadequate one) cannot be used as a platform to develop a new claim based on an event that allegedly took place after the filing of the complaint. The claim cannot be appended to the existing action because no remedies could have been invoked, much less exhausted, for a claim based on events that had not happened when the action was brought.

DATE: July 12, 2022

Keith A. Pesto,
United States Magistrate Judge

Notice by ECF to counsel of record and by U.S. Mail to:

Noel Brown MW-0387
S.C.I. Somerset
1600 Walters Mill Road
Somerset, PA 15510